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SUPREME COURT OF THE STATE OF WASHINGTON

LEONARD ALBERT, M.D., Ph.D., an Individual,
and JEFF SUMME, D.O., an Individual,

Appellants,

v.

DEPARTMENT OF LABOR & INDUSTRIES
OF THE STATE OF WASHINGTON,

Respondent.

**BRIEF OF RESPONDENT
DEPARTMENT OF LABOR AND INDUSTRIES**

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I. INTRODUCTION

In 2011, the Legislature created a new system for managing physicians rendering care to injured workers: the provider network. Effective January 1, 2013, physicians were required to apply to this new system. Physicians whose applications are denied may appeal to the Board of Industrial Insurance Appeals (Board). They may not continue to treat injured workers during the pendency of their appeals.

Leonard Albert, MD, PhD, and Jeff Summe, DO, applied to join the provider network and were denied admission. They appealed the denials to the Board. While their administrative appeals were pending, they filed a complaint in superior court, contending that under RCW 51.52.075, they may continue to practice pending appeal. The superior court rejected their claims.

Their claims lack merit for three reasons. First, because they failed to exhaust their administrative remedies, a separate declaratory judgment action to challenge the administrative decision is not available.

Second, RCW 51.52.075 does not apply to application denials under the provider network system. RCW 51.36 distinguishes between the termination of an existing ability to treat and the denial of a new application, and the plain language of RCW 51.52.075 limits its applicability only to terminations.

Third, Dr. Albert and Dr. Summe have no constitutional liberty or property interest in treating injured workers. Even assuming arguendo that they do, they fail to show that the procedures the Department used in deciding their applications violated due process.

II. ASSIGNMENT OF ERROR

The trial court erred in not dismissing Dr. Albert's and Dr. Summe's action for declaratory relief on the ground that they failed to exhaust administrative remedies.

III. COUNTERSTATEMENT OF THE ISSUES

1. Is this declaratory judgment action barred by the failure to exhaust administrative remedies, where administrative appeals filed by Dr. Albert and Dr. Summe are pending and there is not a final Board order appealable under RCW 51.52.110? (Department's Assignment of Error No. 1)
2. Does RCW 51.52.075 apply to a doctor who has appealed a decision denying an application to treat injured workers when the plain language of that statute covers only the termination of existing authority to treat injured workers?
3. Do Dr. Albert and Dr. Summe have a vested right or protected constitutional interest in treating injured workers where they are not admitted to the provider network and when their interest in joining the provider network is only contractual?

4. Assuming *arguendo* that Dr. Albert and Dr. Summe have a protected constitutional interest in treating injured workers, does the Department's admission process, which provides them with both notice and an opportunity to be heard, comport with due process?

IV. STATEMENT OF THE CASE

A. The Legislature Created The New Provider Network To Improve The Standard Of Care Provided To Injured Workers

To treat injured workers before 2011, medical providers needed only a valid clinical license and to complete a short application. CP 167. Dr. Albert and Dr. Summe had provider numbers and treated patients under the old system.

In 2011, the Legislature created a new "healthcare provider network to treat injured workers." RCW 51.36.010(1). This change reflected the need to provide injured workers with "high quality medical treatment" with "adherence to occupational health best practices." *Id.* The Legislature found that such care prevents disability, reduces loss of family income, and lowers employers' labor and insurance costs. *Id.*

To participate in the network, all physicians, regardless of past treating privileges, must apply by completing the Department's provider application. RCW 51.36.010(2)(c). The Legislature authorized the Department to adopt regulations governing who would be admitted to join

the network, *id.*, and mandated that only providers accepted into the network would be permitted to treat and receive reimbursement for providing continuing care to injured workers. RCW 51.36.010(2)(b). WAC 296-20-01090, adopted under that authority, provides a process for obtaining reconsideration of a denial and specifically provides that a provider may appeal the final Department decision pursuant to RCW 51.52, consistent with the Department's assurance to providers during rulemaking. CP 254-55. Consistent with RCW 51.36, the Department made no representation that providers would be permitted to continue to treat while they appealed a denial of their application to join the new system. CP 124.

Since the provider network became effective on January 1, 2013, over 18,000 physician applications have been reviewed and approved. CP 169. As of November 2013, only 51 applications had been denied. *Id.* Applications to join the network are first considered by the associate medical director. CP 169. If, in the associate medical director's judgment the application warrants further consideration, the application is sent to an independent peer-review credentialing panel for recommendation. CP 169; 171. The credentialing panel reviews the application and makes a recommendation to the Department's medical director, who has been delegated authority to make final determinations on applications. CP 172.

If a decision is made to deny an application, the physician is notified and provided a list of the grounds for the denial. CP 179-84. The physician then has 60 days to request reconsideration or appeal. CP 173.

B. The Department Denied Dr. Albert's And Dr. Summe's Applications To Join The New Provider Network

In September 2012, Dr. Albert applied to join the provider network. CP 176. Due to concerns with his application, the Department forwarded it to an independent credentialing panel for review. CP 177. In December 2012, the three-member peer-review physician panel recommended denial. CP 177. The Department adopted the recommendation, citing among other things Dr. Albert's history of non-compliance with an agreed order of the Department of Health. CP 179.¹ Based on an independent review of Dr. Albert's application and the recommendation of the peer-review panel, the Department's medical director issued an order denying the application. CP 179-80.

¹ The primary medical review panel cited WAC 296-20-01050(3)(c), (3)(j), (3)(l), (3)(o), and (3)(r) as the reasons for denial. Franke Decl. at 2. These provisions relate to noncompliance with a Department of Health order or agreement; noncompliance with administrative and treatment rules, policies and guidelines, or national treatment guidelines; a finding of harm or potential harm due to negligence, incompetence, inadequate or inappropriate treatment or follow-up; informal licensure actions; and material complaints or allegations relating to incidents, misconduct, or the inappropriate prescribing of controlled substances.

Dr. Albert argues his denial letter misstates the law. App. Br. at 23. However, WAC 296-20-01050(3) permits the Department to deny an application during credentialing or recredentialing based on the provider's professional qualifications *and practice history*.

Dr. Albert sought reconsideration. CP 177. His request and supporting materials were considered by a new three-member peer-review physician panel in February 2013. CP 177. That panel also recommended denial. CP 177. Based on that recommendation and a review of both the application and reconsideration materials, the Department's medical director affirmed his prior decision to deny Dr. Albert's application. CP 177, 181. Dr. Albert appealed to the Board.

In August 2012, Dr. Summe applied to join the provider network. CP 177. His application was reviewed through the same process as Dr. Albert's application, except Dr. Summe's application was reviewed by three different three-member physician panels. CP 177-78. Among other things, the primary panel cited concerns with Dr. Summe's past billing practices. CP 178.² All three panels recommended denial. CP 178. Based on those recommendations and his review of Dr. Summe's application and reconsideration materials, the medical director denied Dr. Summe's application. CP 178, 182-84. Dr. Summe appealed to the Board.

C. The Superior Court Denied Dr. Albert's And Dr. Summe's Motion For A Declaratory Judgment

² The primary medical review panel cited WAC 296-20-01050(3)(j), (3)(l), and (3)(q) as the basis of the denial. CP 182. These provisions relate to noncompliance with administrative and treatment rules, policies and guidelines, or national treatment guidelines; a finding of harm or potential harm due to negligence, incompetence, inadequate or inappropriate treatment or follow-up; and billing fraud or abuse or a history of significant billing irregularities.

While their appeals were pending before the Board, Dr. Albert and Dr. Summe jointly filed this declaratory judgment action in superior court. CP 3-12. They sought a declaratory ruling that they were entitled to continue treating and billing for treatment of injured workers pending their appeals from the Department's decision to deny their applications unless the Department obtained an order of suspension under RCW 51.52.075. CP 11, 89-101. Because the Department did not seek an order of suspension along with the denial of their applications, Dr. Albert and Dr. Summe argued the Department's actions violated due process. CP 11, 89-101.

The Department argued the declaratory judgment action should be dismissed because Dr. Albert and Dr. Summe failed to exhaust administrative remedies. CP 149-50. The superior court did not dismiss for failure to exhaust, but it denied Dr. Albert's and Dr. Summe's request for a declaratory judgment on the merits. CP 217. It ruled that RCW 51.52.075 does not apply to the denial of eligibility to participate in the provider network. CP 217. The court also decided Dr. Albert and Dr. Summe had neither a constitutional interest nor a vested right to treat injured workers. CP 218.

V. SUMMARY OF THE ARGUMENT

Because Dr. Albert and Dr. Summe did not exhaust their administrative remedies, they are not entitled to declaratory relief. Their action should have been dismissed on that basis.

Dr. Albert's and Dr. Summe's arguments also fail on the merits. They argue that because the Department did not seek a preliminary order suspending their privileges to treat and bill for treatment of injured workers, RCW 51.52.075 gives them the right to treat injured workers pending their appeals from the Department's decision to deny their applications to join the new provider network. But RCW 51.52.075 applies only to the termination of existing authority to provide services, and it does not apply here. With the 2011 revisions to RCW 51.36.010, physicians obtain the authority to treat workers when their applications are approved to participate in the new network. Dr. Albert and Dr. Summe have never had authority under RCW 51.36.010 to provide medical services to injured workers. They were not terminated; rather, their applications for the new network were denied. RCW 51.52.075 does not apply.

Dr. Albert and Dr. Summe also argue that the Department's failure to obtain a preliminary suspension order constitutes a deprivation of due process. As the superior court concluded, neither Dr. Albert nor

Dr. Summe have a vested right or a constitutional interest in receiving a contract with the state to treat injured workers. Even if such a right existed, Dr. Albert and Dr. Summe fail to show that the procedures employed by the Department and Board violated due process.

VI. STANDARD OF REVIEW

Declaratory judgments are subject to the same appellate review as any other final judgment. RCW 7.24.070. Ordinary rules of appellate procedure apply. *Simpson Tacoma Kraft Co. v. Dep't of Ecology*, 119 Wn.2d 640, 646, 835 P.2d 1030 (1992). The statutory construction and constitutional issues involved here are questions of law reviewed de novo. *See Williams v. Tilaye*, 174 Wn.2d 57, 61, 272 P.3d 235 (2012). An agency's interpretation of a statute is given great deference when that agency is charged with its administration. *See PT Air Watchers v. Dep't of Ecology*, __Wn.2d__, 319 P.2d 23, 26 (2014) (quoting *Port of Seattle v. Pollution Control Hearings Bd.*, 151 Wn.2d 568, 593, 90 P.3d 659 (2004)). A party asserting unconstitutionality bears a heavy burden of demonstrating conflict with the constitution beyond a reasonable doubt. *School Dists' Alliance for Adequate Funding of Special Educ. v. State*, 170 Wn.2d 599, 605, 244 P.3d 1 (2010).

VII. ARGUMENT

A. The Trial Court Erred In Considering Dr. Albert's And Dr. Summe's Arguments Since They Failed To Exhaust Their Administrative Remedies

The superior court determined it would consider Dr. Albert's and Dr. Summe's request for declaratory relief despite the fact that Dr. Albert and Dr. Summe did not appeal from a final decision of the Board. CP 217. That determination was in error.

1. The Superior Court Should Not Have Considered The Applicability Of RCW 51.52.075 Absent A Final Order From The Board of Industrial Insurance Appeals

The superior court's consideration of Dr. Albert's and Dr. Summe's arguments was premature because Dr. Albert and Dr. Summe failed to exhaust their administrative remedies before seeking a declaratory judgment.

All available administrative remedies must be exhausted before seeking relief from superior court. *Citizens for Mount Vernon v. City of Mount Vernon*, 133 Wn.2d 861, 866, 947 P.2d 1208 (1997). This "well-settled rule requiring exhaustion of administrative remedies" applies to an action for declaratory relief. *Ackerley Commc'n, Inc. v. City of Seattle*, 92 Wn.2d 905, 908-09, 602 P.2d 1177 (1979). Sound principles support the rule that even declaratory relief may not be sought before exhausting administrative remedies: the rule prevents premature interruption of the

administrative process, allows development of a factual record, facilitates the exercise of administrative expertise, allows an agency to correct its own errors, and prevents circumvention of administrative procedures by resorting to the courts. *Citizens for Mount Vernon*, 133 Wn.2d at 866.

This rule is equally applicable under the Industrial Insurance Act, where a party must exhaust his or her administrative remedies before seeking relief in superior court. RCW 51.52.110; *Dils v. Dep't of Labor & Indus.*, 51 Wn. App. 216, 219, 752 P.2d 1357 (1988). While it may take time to obtain a final Board decision subject to superior court review, the possibility of delay is not an excuse for premature resort to the courts. *Spokoiny v. Wash. State Youth Soccer Ass'n*, 128 Wn. App. 794, 802, 117 P.3d 1141 (2005); *Dils*, 51 Wn. App. at 220. A party must exhaust his or her administrative remedies first; where the party has an adequate legal remedy, the party may not use a petition for declaratory relief to bypass the available administrative appeal process. *Stafne v. Snohomish Cnty.*, 174 Wn.2d 24, 39, 271 P.3d 868 (2012) (citing *Reeder v. King County*, 57 Wn.2d 563, 564, 358 P.2d 810 (1961)).³

³ In *Ronken v. Board of County Commissioners of Snohomish County*, 89 Wn.2d 304, 310, 572 P.2d 1 (1977), this Court noted that CR 57 provides “[t]he existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate,” but it explained that “courts will be circumspect in granting such relief.” When such relief is administrative in nature, courts have been consistent in requiring exhaustion rather than allowing declaratory relief. *E.g. Grandmaster Sheng-Yen Lu v. King County*, 110 Wn. App. 92, 105, 38 P.3d 1040 (2002).

Here, Dr. Albert and Dr. Summe appealed the Department's decisions to the Board. CP 7. Industrial appeals judges have the authority to determine that RCW 51.52.075 applies in Board proceedings. RCW 51.52.104. Thus, Dr. Albert and Dr. Summe have an adequate remedy available. Because their request for a declaratory judgment is an effort to circumvent administrative proceedings they already initiated, the superior court should not have considered it.

2. Dr. Albert And Dr. Summe Fail To Establish That Pursuing Their Administrative Remedies Would Have Been Futile

Dr. Albert and Dr. Summe appear to argue they are not required to exhaust their administrative remedies because their underlying appeals "do not encompass the issues presented here." App. Br. at 7-8. Specifically, they argue that pursuing administrative remedies before the Board would be futile because the Board cannot address their due process arguments. App. Br. at 10. However, claiming a potential constitutional issue does not excuse them from exhausting their administrative remedies before seeking declaratory relief. *See Ackerley*, 92 Wn.2d at 908-09 (explaining that, even in a case where a party wishes to raise a constitutional question, a party seeking declaratory relief must exhaust its administrative remedies before it has standing to seek relief from the courts, in part because administrative remedies may resolve the alleged constitutional claim).

Futility that will excuse exhaustion arises only in rare situations. *Buechler v. Wenatchee Valley Coll.*, 174 Wn. App. 141, 154, 298 P.3d 110, *review denied*, 178 Wn.2d 1005 (2013); *Dils*, 51 Wn. App. at 219. In deciding whether exhausting administrative remedies would be futile, the dispositive issue is not whether an administrative agency can consider a constitutionally grounded *argument*, but whether there is a *remedy* it can grant that would address the grievance. *Ackerly*, 92 Wn.2d at 908-09 (citing *Lange v. Woodway*, 79 Wn.2d 45, 48, 483 P.2d 116 (1971)).

Here, Dr. Albert and Dr. Summe argue that RCW 51.52.075 should apply to their applications to join the provider network. App. Br. at 13-17. The Board has authority to consider that argument, and it may grant them relief if it agrees, which would render unnecessary any constitutional analysis. “If . . . an administrative proceeding might leave no remnant of the constitutional question, the administrative remedy plainly should be pursued.” *Ackerley*, 92 Wn.2d at 909 (quoting *Public Utilities Comm’n of Cal. v. United States*, 355 U.S. 534, 539-40, 78 S. Ct. 446, 2 L. Ed. 2d 470 (1958)).

Dr. Albert and Dr. Summe also appear to argue that it would be futile to pursue their remedy before the Board because the industrial appeals judge in Dr. Summe’s case said the RCW 51.52.075 issue was not before him, *absent a motion*. App. Br. at 10. Neither Dr. Albert nor

Dr. Summe claim to have made a motion regarding that issue, nor do either offer any cogent basis for concluding it was improper or unreasonable for the industrial appeals judge to direct the filing of such a motion if they wished the judge to issue an order that would grant them relief on those grounds.⁴ Therefore, even assuming a claim of futility could excuse complying with RCW 51.52's appeal provisions, Dr. Albert and Dr. Summe have failed to show either that they have exhausted their remedies or that pursuing their remedies would be futile.

Finally, the ruling of an industrial appeals judge is not a final ruling of the Board. *See* RCW 51.52.104. Dr. Albert and Dr. Summe do not argue, nor could they, that in the event the industrial appeals judge denied their motion, it would have been futile for them to petition the Board for review. RCW Title 51 provides an adequate process for administrative review, which requires certain actions by Dr. Albert and Dr. Summe to accomplish that review. RCW 51.52.104, .110. Since they failed to take those actions, this Court should determine that they failed to exhaust their administrative remedies.

⁴ If Dr. Albert had filed a motion for relief and if it had been denied, he would have had the right to seek an interlocutory appeal of that decision. WAC 263-12-115.

B. RCW 51.52.075 Applies Only To Providers With Existing Privileges; It Does Not Apply To New Applications

On its face, RCW 51.52.075 applies only to situations in which the Department seeks to terminate a provider's existing authority to treat and to bill for treatment. However, Dr. Albert and Dr. Summe argue RCW 51.52.075 also applies to their initial applications to join the provider network. App. Br. at 13-17. If this Court chooses to reach that issue, it should reject their argument. The plain language of RCW 51.52.075 limits its applicability to decisions of the Department that "terminate" a provider's existing authority to treat injured workers. Because Dr. Albert and Dr. Summe have never been admitted to the provider network, the Department's decision to deny their initial applications was not a "termination" under RCW 51.52.075. CP 217.

1. By Its Plain Language, RCW 51.52.075 Applies Only To Decisions That Terminate An Authority To Treat And Bill For Treatment Of Injured Workers

RCW 51.52.075 applies to decisions that terminate an existing membership in the provider network; it does not apply to orders denying new applications to join. Nonetheless, despite the fact that they have not been admitted to the network, Dr. Albert and Dr. Summe argue that RCW 51.52.075 permits them to treat injured workers under the new provider network while they appeal the denial of their applications to join

the network. App. Br. at 13-17. But RCW 51.52.075 only applies to providers whose “authority” to provide services has been terminated:

When a provider files with the board an appeal *from an order terminating the provider’s authority to provide services* related to the treatment of industrially injured workers, the department may petition the board for an order immediately suspending the provider’s eligibility to participate as a provider of services to industrially injured workers under this title pending the final disposition of the appeal by the board. The board shall grant the petition if it determines that there is good cause to believe that workers covered under this title may suffer serious physical or mental harm if the petition is not granted. The board shall expedite the hearing of the department’s petition under this section.

RCW 51.52.075 (emphasis added). Because Dr. Albert and Dr. Summe have never been admitted to the provider network, they do not have the “authority” to treat injured workers as part of that network. RCW 51.36.010(2)(b). Had they had the “authority” to treat patients, and had the Department taken action to terminate them from the network (*see* RCW 51.36.010(7), .110(3)), RCW 51.52.075 provides a process for the Department to petition the Board for an order immediately suspending their authority to treat workers during an appeal. But RCW 51.52.075 does not apply here. With the 2011 revisions to RCW 51.36.010, a provider does not obtain the authority to treat workers until his or her application is approved. RCW 51.36.010(2)(b). An application to join the

network is treated differently than the question of termination once someone obtains network status.

The goal of statutory interpretation is to discern and implement the Legislature's intent. *Ellensburg Cement Products, Inc. v. Kittitas Cnty.*, ___ Wn.2d ___, 317 P.3d 1037, 1041 (2014). In doing so, the Court looks first to the plain meaning of the language of the statute. *Id.* When determining a statute's plain meaning, the court considers all related statutes. *Tingey v. Haisch*, 159 Wn.2d 652, 657, 152 P.2d 1020 (2007). If the plain language of the statute is unambiguous, as here, the Court's inquiry is at an end. *Manary v. Anderson*, 176 Wn.2d 342, 352, 292 P.3d 96 (2013).

The statutory scheme shows the Legislature differentiates between application denials and terminations, and it therefore did not intend for the provisions of RCW 51.52.075 to apply to denials. Under RCW 51.36.010(2)(c), a provider "*shall apply* to the network by completing the department's provider application." (Emphasis added.) In a corresponding statute, two different subsections outline the Department's authority regarding management of providers. *See* RCW 51.36.110. Under the first, the Department may "[a]pprove or deny applications to participate as a provider of services furnished to industrially injured workers." RCW 51.36.110(2) (emphasis added). In

contrast, the following subsection allows the Department to “[t]erminate or suspend eligibility as a provider of services.” RCW 51.36.110(3) (emphasis added). The Legislature’s separate grant of authority for each shows that decisions to deny are different from decisions to terminate. If the Legislature intended for RCW 51.52.075 to apply to denials of applications to participate in the new provider network, it would have revised this statute to include denials.

The distinction between the denial of a new application and the termination of existing authority is found elsewhere in the statutory scheme. *See, e.g.*, RCW 51.36.010(2)(d) (requiring the development of separate criteria for “removal of a provider from the network”); RCW 51.36.010(6) (authorizing the Department to “remove” or “take other appropriate action regarding a provider’s participation” and again distinguishing between denial and removal with regard to waiting periods for reapplication); RCW 51.36.010(7) (authorizing the Department to “permanently remove” or “take other appropriate action” against a provider who exhibits a “pattern of conduct of low quality care”); RCW 51.36.130 (authorizing the Department to “deny applications of health care providers to participate as a provider of services to injured workers . . . or terminate or suspend providers’ eligibility to participate” for using false, misleading or deceptive advertising) (emphasis added).

Here, Dr. Albert and Dr. Summe applied to join the medical provider network. CP 176-78. The Department denied their applications. CP 179-84. Because they were not members of the network, no order was issued that terminated an authority to treat and bill as a member of the network. CP 217. Accordingly, RCW 51.52.075 does not apply. Dr. Albert and Dr. Summe misstate the record when they assert that “the Department issued orders ‘terminating the provider’s authority to provide services related to the treatment of industrially injured workers.’” App. Br. at 16 (citing CP 28-29, 139). As documented in December 2012 and April 2013 application denial orders, the Department denied Dr. Albert’s and Dr. Summe’s applications to join the network; it did not terminate them from the network, as they did not belong to it. CP 28-29; 139.

Dr. Albert and Dr. Summe also argue that there must be “good cause to believe that workers may suffer serious physical or mental harm” in order for them to stop treating injured workers, presumably while their appeals of the decisions denying their applications are pending. *See* App. Br. at 15 (citing RCW 51.52.075); *see also* App. Br. at 16. This argument is premised on RCW 51.52.075. App. Br. at 15. Since RCW 51.52.075 does not apply to Dr. Albert’s and Dr. Summe’s new applications, as explained above, this argument fails.

To the extent they argue that their application may not be denied except where there is “good cause to believe that workers may suffer serious physical or mental harm,” their argument is contrary to RCW 51.36.010. In creating the provider network, the Legislature gave the Department broad discretion to adopt standards for admitting providers. *See* RCW 51.36.010(1), (2)(c), (10). Those standards are found in WAC 296-20-01030 and WAC 296-20-01050, and potential harm to a worker is only one reason among several that can disqualify a provider from participation in the network.⁵ Dr. Summe, for example, was denied admission for, among other things, “billing fraud or abuse” under WAC 296-20-01050(3)(q). CP 182.

The standard for suspending an existing authority to treat during an appeal from an order of termination thus differs from the standards used for granting or denying an application to participate in the provider network. *Compare* RCW 51.52.075 (requiring the Department to show “good cause to believe that workers covered under this title may suffer serious physical or mental harm” to obtain a order suspending a provider’s

⁵ Dr. Albert and Dr. Summe note that the denial letter cites WAC 296-20-01070 concerning “Finding of risk of harm.” App. Br. at 15. Under that provision, a provider who is denied admission to or removed from the network based on a finding of risk of harm under WAC 296-20-01100 must wait five years before reapplying. *See* WAC 296-20-01070(1); *see also* RCW 51.36.010(6) (requiring Department to establish waiting periods that may be imposed). Imposing a waiting period where there is a risk of harm to patients does not negate any other reason that would disqualify a provider applicant.

authority to treat) *with* RCW 51.36.010(2)(c)(iii) (permitting the Department to deny an application based on an applicant's lack of hospital privileges; WAC 296-20-01030(1) (requiring the Department to deny an application if received incomplete); WAC 296-20-01030(2) (requiring the Department to deny an application if the applicant is not has insufficient professional liability insurance coverage); WAC 296-20-01050(3)(s) (permitting the Department to deny an application if the applicant has a criminal history).

Dr. Albert and Dr. Summe have demonstrated no legislative intent to expand RCW 51.52.075 beyond its plain language. It applies only to termination orders and is not implicated when the Department approves or denies an application to participate in the new provider network established in RCW 51.36.

2. The Provider Network Is a New System to Which Neither Dr. Albert Nor Dr. Summe Are Admitted

Dr. Albert and Dr. Summe argue that the Department wrongly assumed they are “not established providers of medical services to injured workers . . . but rather are new applicants.” App. Br. at 22. This argument disregards the language and effect of RCW 51.36.

In passing the provider network reform package, the Legislature created a new system for regulating the provision of medical treatment to

injured workers. RCW 51.36.010. In doing so, it directed the Department to redesign the way it reviewed and accepted medical providers into the system. *Id.* The Legislature required that all providers, regardless of past treating privileges, “shall *apply* to the network by completing the Department’s provider application which shall have the force of a contract with the Department to treat injured workers.” RCW 51.36.010(2)(c) (emphasis added). No past provider was deemed to be a participant in the new network; each provider had to apply and be accepted in compliance with the new standards.

The Legislature also provided that, once the provider network was established, injured workers could receive treatment only from network providers, except for initial office or emergency room visits. RCW 51.36.010(2)(b). Accordingly, until they are admitted into the network, neither Dr. Albert nor Dr. Summe may treat or bill for treatment of injured workers. The Department properly considered them to be new applicants.

3. Because Dr. Albert And Dr. Summe Are Not Admitted To The Network, The Department’s Denial Of Their Applications Is Not Contrary To WAC 296-20-01100(2)

Dr. Albert and Dr. Summe further argue that the Department’s denial of their applications is contrary to WAC 296-20-01100(2). App. Br. at 17. This argument assumes the truth of what they have not yet

proven in their administrative appeals. WAC 296-20-01100(2) provides that “it is not the intent of the Department to *remove* or otherwise take action when providers are practicing within Department policies and guidelines, or within best practices established or developed by the Department.” (Emphasis added). Like RCW 51.52.075, WAC 296-20-0110(2) relates to *removal* from the network of providers with existing treatment privileges.

By contrast, the administrative codes that set forth the minimum standards for initial admission are found at WAC 296-20-01030 and WAC 296-20-01050. CP 168. Dr. Albert and Dr. Summe were denied admission to the network because the Department determined they did not meet the minimum standards established under a number of those provisions. CP 179-84. On appeal before the Board, they bear the burden of establishing their entitlement to admission to the network. RCW 51.52.050(2)(a). Because they have not yet done so, they may not circumvent the appeal process with a bare claim that they are qualified or that they “do not pose any risk of serious physical or mental harm.” App. Br. at 17.

4. The Department’s Decision To Deny An Application Is Not Stayed Pending Appeal

Dr. Albert and Dr. Summe argue that RCW 51.52.075 operates to stay the Department's decision to deny their applications. App. Br. at 1, 15-17. As explained above, RCW 51.52.075 does not apply to denials of applications.

RCW Title 51 provides for stays of Department decisions pending appeal in a number of contexts. *See, e.g.*, RCW 51.52.050(2)(b) (stay of benefits to injured worker pending appeal); RCW 51.14.090(4) (stay of decision withdrawing certification of self-insurance pending appeal); RCW 51.14.095 (stay of decision seeking corrective action against a self-insured employer). When the Legislature wants to provide for a stay, it knows how to do so.

There is no language in RCW Title 51 that provides for or allows the Department's decision to deny a provider's application to join the network to be stayed pending appeal from that determination. To the contrary, the Act provides the opposite by precluding treatment from non-network providers, such as Dr. Albert and Dr. Summe. *See* RCW 51.36.010(2)(b).⁶

⁶ The logic of this approach is clear. Just as a law school graduate who fails the bar exam is not deemed to be admitted to the bar while awaiting a retest (*see* APR 4), a provider who is denied admission to the provider network established in RCW 51.36.

C. Procedural Due Process Is Not Implicated Because Dr. Albert And Dr. Summe Do Not Have A Vested Right Or Constitutional Interest In A Contract To Treat Injured Workers

Dr. Albert and Dr. Summe assert a due process violation under article 1, section 3 of the Washington State Constitution. App. Br. at 17-22. There can be no violation here because no protected constitutional interest is implicated.

In determining whether a procedure violates due process, the court engages in a two-step analysis. *Wash. State Att’y General’s Office v. Wash. Utilities & Transp. Comm’n*, 128 Wn. App. 818, 831, 116 P.3d 1064 (2005). First, the court determines whether a liberty or property interest exists entitling a party to due process protections. *Id.* Second, if such a constitutionally protected interest exists, the court employs a balancing test to determine the degree of process due. *Id.*⁷

A party alleging deprivation of due process must first establish a legitimate claim of entitlement. *Campos v. Dep’t of Labor & Indus.*, 75 Wn. App. 379, 389, 880 P.2d 543 (1994). Legitimate claims of entitlement entail vested liberty or property rights. *Id.* at 389; *Haberman v. Wash. Pub. Power Supply Sys.*, 109 Wn.2d 107, 142, 744 P.2d 1032,

⁷ The due process clause of the Washington Constitution is coextensive with the Fourteenth Amendment to the United States Constitution. *State v. Morgan*, 163 Wn. App. 341, 352, 261 P.3d 167 (2011). Because it provides no greater protections, separate analyses under the state and federal constitutions are not required. *Hardee v. Dep’t of Social & Health Servs.*, 172 Wn.2d 1, 8, 256 P.3d 339 (2011).

750 P.2d 254 (1988). A vested right must be something more than a mere expectation based upon an anticipated continuance of the existing law; it must have become a title, legal or equitable, to the present or future enjoyment of property, a demand, or a legal exemption from a demand by another. *Caritas Servs., Inc. v. Dep't of Soc. & Health Servs.*, 123 Wn.2d 391, 414, 869 P.2d 28 (1994).

Dr. Albert and Dr. Summe appear to argue two sources for their claimed entitlement: their “profession” and the procedures provided in RCW 51.52.075. App. Br. at 18-20. But their profession does not create a claim of entitlement because the Department’s actions do not interfere with their ability to practice medicine or to take on new patients outside the workers’ compensation system. CP 249. Likewise, Dr. Albert’s and Dr. Summe’s previous ability to treat injured workers under the old system did not create either a vested right or a constitutional interest in treating injured workers. CP 218. Rather, Dr. Albert and Dr. Summe merely seek the privilege of a contract with the state to provide services to injured workers. RCW 51.36.010(2)(c). This is a “mere expectation” and is not a vested right. *See Caritas*, 123 Wn.2d at 414.

While state statutes or regulations can create due process liberty interests where none would otherwise have existed, this has not occurred here. *See In re Cashaw*, 123 Wn.2d 138, 144, 866 P.2d 8 (1994). For a

state law to do this, it must contain “substantive predicates” to the exercise of discretion and “specific directives to the decision maker that if the regulations’ substantive predicates are present, a particular outcome must follow.” *Cashaw*, 123 Wn.2d at 144. Thus, “laws that dictate particular decisions given particular facts can create liberty interests, but laws granting a significant degree of discretion cannot.” *Id.* Statutes that merely create a procedure do not create liberty interests. *Id.* at 146 (citing *Olim v. Wakinekona*, 461 U.S. 238, 250, 130 S. Ct. 1741, 1748, 75 L. Ed. 2d 813 (1983)).

In this case, nothing in RCW 51.52.075 creates a liberty interest in treating injured workers. On its face, RCW 51.52.075 only creates a procedure by which the Department may seek suspension of a physician’s existing authority to treat injured workers when the termination of that authority has been appealed; it does not create a substantive right to treat injured workers pending appeal in that situation or any other. The “substantive predicates” for admission were left up to the Department to adopt. *See* RCW 51.36.010(2)(c); WAC 296-20-01030; WAC 296-20-01050. As such, RCW 51.52.075 does not create a liberty interest. *Cashaw*, 123 Wn.2d at 144.

Nor do Dr. Albert’s and Dr. Summe’s prior ability to treat under the old system give them a vested right or a constitutional interest in

treating injured workers.⁸ In this case, it was the Legislature that ended Dr. Albert's and Dr. Summe's ability to provide care to injured workers. At heart, Dr. Albert and Dr. Summe contest the legislative choice to reform the provider system, which includes requiring physicians to apply anew to treat and bill patients in the provider network regardless of past treating privileges. RCW 51.36.010(2)(c). But the Legislature can change the system and such a change does not implicate due process. *See Atkins v. Parker*, 472 U.S. 115, 129-30, 105 S. Ct. 2520, 86 L. Ed. 2d 81 (1985); *Bi-Metallic Inv. Co. v. State Bd. of Equalization*, 239 U.S. 441, 445-46, 36 S. Ct. 141, 60 L. Ed. 372 (1915); *75 Acres, LLC v. Miami-Dade County*, 338 F.3d 1288, 1294 (11th Cir. 2003); *Hoffman v. City of Warwick*, 909 F.2d 608, 620 (1st Cir. 1990). Where the legislature enacts general legislation that addresses all physicians' ability to treat injured workers, in the absence of any substantive constitutional infirmity, "the legislative determination provides all the process that is due." *See Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 433, 102 S. Ct. 1148, 71 L. Ed.2d

⁸ Dr. Albert and Dr. Summe also suggest that denying their applications deprives workers of competent and helpful treatment and inures to the detriment of such workers by reducing their freedom of choice between and among practitioners." App. Br. at 17. Neither Dr. Albert nor Dr. Summe has standing to raise arguments on behalf of hypothetical patients. In any event, no authority exists for the proposition that patients have any statutory or constitutional right to see a particular physician within the context of a workers' compensation claim. *See* RCW 51.36.010(2)(b) (providing that injured workers may receive care only from network providers once the network is established except for initial office or emergency room visits).

265 (1982). Since Dr. Albert's and Dr. Summe's loss of treatment privileges resulted from legislative reforms, their argument that they have been denied due process as a consequence of those reforms fails.

D. Assuming Arguendo Dr. Albert And Dr. Summe Have A Constitutional Interest In Treating Injured Workers, The Department's Procedures Comport With Due Process

The Department does not concede that Dr. Albert and Dr. Summe have identified any cognizable constitutional interest in this case that can serve as the threshold predicate for their due process claim. Nevertheless, the process the Department used in considering Dr. Albert and Dr. Summe's applications comports with due process because it afforded them both notice and an opportunity to be heard at a meaningful time and in a meaningful manner. Due process is a flexible concept and calls for such procedural protections as the particular situation demands. *Morrissey v. Brewer*, 408 U.S. 471, 481, 92 S. Ct. 2593, 33 L. Ed. 2d 484 (1972). In reviewing a procedural due process claim, courts balance (1) the private interest to be protected; (2) the risk of erroneous deprivation of that interest by the government's procedures; and (3) the government's interest in maintaining those procedures. *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S. Ct. 893, 903, 47 L. Ed. 2d 18 (1976); *Hardee v. Dep't of Soc. & Health Servs.*, 172 Wn.2d 1, 10, 256 P.3d 339 (2011).

1. Dr. Albert's And Dr. Summe's Interest In Treating Injured Workers Is Limited

The first factor the court considers in determining whether the procedures employed here comport with due process is the nature of the private interest at stake. *Mathews*, 424 U.S. at 335. Dr. Albert and Dr. Summe have an extremely limited interest at stake because the decision to deny their applications to enter into a contractual relationship allowing them to treat injured workers does not deprive them of their ability to use their professional licenses or to practice medicine. CP 249. Dr. Albert and Dr. Summe argue that under *Nguyen v. Dep't of Health*, 144 Wn.2d 516, 29 P.3d 689 (2001), they have liberty and property interests in their professional licenses that the Department has infringed by denying their applications to treat injured workers. App. Br. at 17-18. Because *Nguyen* dealt with an action to revoke a physician's license to practice, it is inapplicable here where the state has only denied Dr. Albert and Dr. Summe a contract to treat a subset of patients.

In *Nguyen*, a physician sought review after the Department of Health revoked his license to practice medicine. *Id.* at 519-20. Finding that the loss or suspension of a physician's license "destroys his or her

ability to practice medicine,” the Court held that due process required a higher standard of proof in medical disciplinary hearings. *Id.* at 518.⁹

Here, Dr. Albert’s and Dr. Summe’s professional licenses are not at risk. The Department’s denial of their applications to join the provider network does not deprive them of the ability to practice medicine; it merely denies them the privilege of a separate contract with the state to receive reimbursement for treating injured workers. *See* RCW 51.36.010(2)(c). While Dr. Albert and Dr. Summe may have constitutional interests in their medical licenses, they do not have a constitutional interest in treating a subset of patients covered by the Industrial Insurance Act. *See Cohen v. Bane*, 853 F. Supp. 620 (E.D.N.Y. 1994) (finding it “well-established that there is no property interest in continued participation in the Medicaid program”). Accordingly, applying the first *Mathews* factor to this case, Dr. Albert’s and Dr. Summe’s private interest is quite limited.

2. The Department’s Procedures And The Administrative Process Limit The Risk Of Erroneous Deprivation

The second *Mathews* factor is the risk of erroneous deprivation. *Mathews*, 424 U.S. at 335. The Department’s application review process

⁹ The *Nguyen* decision has been both criticized and limited. *See Hardee*, 172 Wn.2d 1 (plurality, and concurrence). In *Hardee*, four members of this Court agreed *Nguyen* was wrongly decided, *id.* at 22-27; and four members further narrowed its applicability by distinguishing it and upholding the license revocation at issue, *id.* at 9-18.

and the availability of a subsequent separate administrative appeal are

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sufficient safeguards to protect physicians from the risk of erroneous deprivation. The essential principle of due process is the right to notice and a meaningful opportunity to be heard at a meaningful time and in a meaningful manner. *Armstrong v. Manzo*, 380 U.S. 545, 552, 85 S. Ct. 1187, 1191, 14 L. Ed. 2d 62 (1965). Since Dr. Albert and Dr. Summe were afforded this right and opportunity, their argument that the procedures used in considering their applications violated due process lacks merit.¹⁰

Applications to join the provider network are subjected to a multi-level review process. CP 169-73. Before any decision, Dr. Albert's and Dr. Summe's applications were considered by an internal Department reviewer, a separate and independent panel of unbiased peer-reviewers, and finally by the medical director, a senior clinician. CP 169- 73. When an initial decision was made to deny their applications, Dr. Albert and Dr. Summe were each given a statement of the administrative codes on which the rejection of their applications was based. CP 179-84. Each had

¹⁰ While additional procedural safeguards will always decrease the likelihood of erroneous deprivation, they are not required on that basis alone. "Rather, the current procedures must suffer from inadequacies that make erroneous deprivations readily foreseeable." *Hardee*, 172 Wn.2d at 12.

an opportunity to request reconsideration, to submit additional materials in support of their request, and to have such material reconsidered, along with their applications, by a second independent peer-review panel before a second and final determination by the medical director. CP 173.

Upon affirmation of that decision, Dr. Albert and Dr. Summe had the right to appeal the decision to the Board. *See* RCW 51.52.050; WAC 296-20-01090(4). At the Board, they are afforded a hearing before an unbiased tribunal. RCW 51.52.010; WAC 263-12-091. As part of that hearing, they enjoy the full panoply of procedural safeguards: both the rules of civil procedure and the rules of evidence apply in hearings before the Board. WAC 263-12-115(4); WAC 263-12-125. They have the right to call witnesses, to cross examine the witnesses against them, to make a record, and to have the matter decided only on the evidence adduced at such hearings in a written decision. RCW 51.52.100; WAC 263-12-135; WAC 263-12-140. If dissatisfied with the industrial appeals judge's decision, Dr. Albert and Dr. Summe may seek review of the industrial appeals judge's decision by the full Board. RCW 51.52.104; WAC 263-12-145. If aggrieved by the Board's decision, they may further appeal to the superior court. RCW 51.52.050; WAC 296-20-01090(4). Given these procedural protections, Dr. Albert and Dr. Summe were not denied due process. *See Mathews*, 424 U.S. at 343 (finding a full pre-deprivation

evidentiary hearing unnecessary in the context of termination of disability benefits and upholding as constitutional far lesser procedural protections).

Dr. Albert and Dr. Summe also argue that the Department improperly placed the burden of proof on them to establish their qualifications to join the network. App. Br. at 21. They overlook the fact that the Legislature has placed the burden on them to show their entitlement to admission. RCW 51.52.050(2)(a) (providing that on appeal, “the appellant shall have the burden of proceeding with the evidence to establish a prima facie case for the relief sought in such appeal”). Dr. Albert and Dr. Summe provide no authority or explanation why it was unconstitutional for the Legislature to place the burden on them to prove their entitlement to treat injured workers. App. Br. at 21. This Court should disregard their unsupported argument. *See Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).¹¹

Nor do Dr. Albert and Dr. Summe make any showing that the current system, which allows them to seek reconsideration, to provide information in support of that request to a new, unbiased peer-review panel, and then to appeal to the Board is insufficient to protect their

¹¹ Statutes and regulations implementing them are presumed to be constitutional. *Island County v. State*, 135 Wn.2d 141, 146-47, 955 P.2d 377 (1998). The party asserting unconstitutionality of a statute must demonstrate its conflict with the constitution beyond a reasonable doubt. *Id.* Dr. Albert and Dr. Summe have not even attempted to meet their burden.

limited interest in receiving a contract from the state to treat injured workers. *See* RCW 51.36.010(2)(c). In light of the fact that they are applying for a new contract with the state to provide medical services to injured workers, their assertion that placing the burden of proof on them “amounts to a rigged guessing game and is fundamentally unfair and unjust” appears to be mere hyperbole. *See* App. Br. at 21. The procedural protections that are in place sufficiently protect against erroneous denials.

3. The Department Has A Significant Interest In Protecting Injured Workers

The third *Mathews* factor is the state’s interest, which includes its interest in improving the quality of medical treatment received by injured workers, preventing disability and reducing loss of family income for workers, and lowering labor and insurance costs for employers (*see* RCW 51.36.010(1)). *See Mathews*, 424 U.S. at 335; *Hardee*, 172 Wn.2d at 12. In contrast to Dr. Albert’s and Dr. Summe’s limited interest in gaining access to the provider network, the state’s interest is broad and substantial.

The provider network was created as remedial legislation. *See* Laws of 2011, ch. 6, § 1. The Legislature specifically found “that high quality medical treatment and adherence to occupational health best practices can prevent disability and reduce loss of family income for

workers, and lower labor and insurance costs for employers.” RCW 51.36.010(1). The Legislature determined greater controls were needed over which providers would be permitted to treat injured workers, and it gave the Department authority to create new standards for admission to the network. RCW 51.36.010(1), (2)(c), (10). The Department also has statutory authority to apply those standards to determine who is approved to participate as a provider of services furnished to industrially injured workers. RCW 51.36.110(2).

For its part, in compliance with the Legislature’s directives, the Department undertook a two-year, multi-million dollar project to set up the provider network that consisted of hiring staff, forming an advisory group, developing and adopting regulations, purchasing and changing information technology, and processing applications. CP 168. As of November 2013, the Department had accepted over 18,000 providers into the provider network. CP 169. The Department has denied only 51 applications. CP 169. Not all of these individuals have appealed to the Board, but all have the right to a hearing on the denial of their application.

The state has a strong interest in ensuring the health and safety of injured workers. As mandated by the Legislature, the Department has acted to protect that interest by establishing a provider network, implemented with appropriate standards and meaningful procedural safeguards, that satisfy all constitutional due process requirements.

E. The Department Properly Notified The Workers Of The Physicians' Changed Status

Finally, Dr. Albert and Dr. Summe appear to argue it was improper for the Department to notify their existing workers' compensation patients of their inability to provide ongoing treatment. App. Br. at 24¹² (citing CP 26-27). This Court should reject their argument. Notice was proper for two reasons. First, notification is required to prevent interruption of care, thus helping to ensure that patients receive the care they need. Second, they cite no authority—and there is none—for the proposition that a state agency cannot notify workers of a change in provider status. *See* App. Br. at 24. Arguments without supporting authority need not be considered. *Cowiche Canyon*, 118 Wn.2d at 809.

¹² Dr. Albert and Dr. Summe also argue the Department improperly notified the National Provider Database of its decision to deny their applications pending their appeals. App. Br. at 20. State agencies and health plans are required to report “final adverse actions” to the NPDB within 30 days of the date the action is taken. One such action that must be reported is “[e]xclusion from participation in Federal or State health care programs.” 42 U.S.C. § 1320a-7e (g)(1)(A)(iv). Such reporting is required regardless of whether the action is the subject of a pending appeal. 45 C.F.R. § 61.7(a).

RCW Title 51 is intended to provide sure and certain relief for workers injured in the course of employment. RCW 51.04.010; *Provost v. Puget Sound Power & Light Co.*, 103 Wn.2d 750, 696 P.2d 1238 (1985). Integral to that purpose is the provision of medical services. *See* RCW 51.36.010(2)(a). To ensure that injured workers receive appropriate, high quality medical care, only providers who have been admitted to the provider network may treat injured workers, and the state will not pay for treatment from non-network providers except for an initial office visit or emergency room visit. RCW 51.36.010(2)(b). An injured worker whose physician is not admitted to the network may therefore experience an interruption in care if not provided sufficient notice and an opportunity to find a new provider within the network. *See id.*

To prevent such interruptions, the Department notified patients of providers whose applications had been denied unless a request for reconsideration was received from the provider within 30 days of the denial. CP 173. While the Legislature expressly mandated that the Department assist injured workers in finding new providers in the event of a termination, the Department has also done so in the context of denials, because failing to do so could compromise care to workers whom the Industrial Insurance Act is intended to protect. *See* RCW 51.36.010(9). Given the underlying purposes of the Act, this action was appropriate, and

given the opportunity afforded providers to delay notice by requesting reconsideration, it cannot be said that this action taken to protect patients was a violation of Dr. Albert's or Dr. Summe's due process rights.

VIII. CONCLUSION

Because Dr. Albert and Dr. Summe failed to exhaust their administrative remedies before filing this declaratory judgment action, the Department asks this Court to order dismissal of the declaratory judgment action.

In the alternative, the Department asks this Court to affirm the superior court's denial of declaratory relief. The Legislature has required all physicians who wish to be paid under the workers' compensation system for treating injured workers to apply to the provider network. A denial of such an application does not trigger the additional procedures under RCW 51.52.075, which only applies to terminations of existing authority to provide services. Dr. Albert and Dr. Summe have demonstrated no violation of due process in the consideration and denial of their applications.

RESPECTFULLY SUBMITTED this 24th day of March, 2014.

ROBERT W. FERGUSON
Attorney General

A handwritten signature in black ink, appearing to read "Mike Throgmorton", with a stylized, flowing script.

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NO. 89664-0

SUPREME COURT
OF THE STATE OF WASHINGTON

LEONARD ALBERT, M.D., Ph.D., an
individual, and JEFF SUMME, D.O., an
individual,

Appellants,

v.

DEPARTMENT OF LABOR AND
INDUSTRIES,

Respondent.

DEPARTMENT OF
LABOR AND
INDUSTRIES' NOTICE
OF ERRATA

The Department of Labor & Industries files this Notice of Errata to correct the following inadvertent error in its Brief of Respondent, filed March 24, 2014:

- Page 32, lines 15-17: delete the sentence: "When an initial decision was made to deny their applications, before any notification of patients or the National Practitioner Database, Dr. Albert and Dr. Summe were each given a copy of the complete file considered in the admission process and a

statement of the administrative codes on which the rejection of
their applications was based. CP 179-84.”

A corrected page is attached.

RESPECTFULLY SUBMITTED this 7 day of April, 2014.

ROBERT W. FERGUSON
Attorney General

A handwritten signature in black ink, appearing to read "Mike Throgmorton", with a long horizontal flourish extending to the right.

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OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
Sent: Monday, April 07, 2014 9:40 AM
To: 'Hammer, Zelma L (ATG)'
Cc: Throgmorton, Michael (ATG); Shawn Newman (shawn@newmanlaw.us);
randy@randygordonlaw.com
Subject: RE: Leonard Albert, MD, PhD and Jeff Summe, DO v. DLI; Supreme Court No. 89664-0

Rec'd 4-7-14

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Hammer, Zelma L (ATG) [mailto:ZelmaH@ATG.WA.GOV]
Sent: Monday, April 07, 2014 9:34 AM
To: OFFICE RECEPTIONIST, CLERK
Cc: Throgmorton, Michael (ATG); Shawn Newman (shawn@newmanlaw.us); randy@randygordonlaw.com
Subject: Leonard Albert, MD, PhD and Jeff Summe, DO v. DLI; Supreme Court No. 89664-0

Please find attached for filing the Department's Notice of Errata and Declaration of Mailing in the above matter.

Sincerely,

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